

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO.
2:15MD1203

SHEILA BROWN, ET AL.

CIVIL ACTION NO.

v.

99-20593

AMERICAN HOME PRODUCTS
CORPORATION

Appellant: Dr. Michael Ivy
Arbitration No.: 906
Claim No.: 183/00 8029576

REPORT AND AWARD
OF ARBITRATOR

FINDINGS OF FACT

1. On July 13, 2006, the AHP Settlement Trust ("Trust") issued a Final Determination denying the claim of Dr. Michael Ivy for Matrix Compensation Benefits.
2. On July 24, 2006, Dr. Michael Ivy filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.
3. On April 27, 2007, the claim of Dr. Michael Ivy was referred by the Court to Arbitration pursuant to VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.
4. On Wednesday, July 18, 2007 at 2:00 p.m., an Arbitration Hearing was held concerning the claim of Dr. Michael Ivy.

5. The Trust determined that Dr. Ivy was not entitled to any Matrix Compensation Benefits on the basis that he failed to supply the documentation required to establish Diet Drug ingestion.

6. In his statement of the case, Dr. Ivy requests benefits based on alleged medical symptoms and conditions purportedly caused by the use of the Diet Drugs. In his Green Form, Dr. Ivy indicates that he believes he is entitled to Matrix B-1 Benefits. See Green Form, Part I, page 4, question 6.

ANALYSIS

FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, which were established to provide benefits to class members. See Settlement Agreement, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund A provides funding only for non-Matrix specified benefits and expenses, e.g., drug refunds and echocardiogram reimbursement. See Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62). Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62.

2. The arbitration process only covers determinations made regarding Fund B and the eligibility of claimants to receive Matrix Compensation Benefits and/or the amount of Matrix Compensation Benefits they are entitled to receive.

MATRIX ELIGIBILITY AND QUALIFICATION

1. Under the Settlement Agreement, Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. The A Matrix, or the full

compensation matrix, applies to claimants who: (1) have been diagnosed timely as FDA Positive; (2) ingested the diet drugs for sixty-one (61) or more days; and (3) have no conditions requiring a reduced payment under the terms of the Settlement Agreement. See id. § IV.B.2.d.(1). The B Matrix, or reduced compensation matrix, applies to claimants who: (1) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the diet drugs); or (2) were diagnosed timely as FDA Positive and ingested the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the diet drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. See id. § IV.B.2.d.(2).

2. In determining the length of diet drug usage, Section VI.C.2.d of the Settlement Agreement requires the claimant to submit documentary proof concerning the period of time the diet drugs were ingested. Specifically, the claimant must submit pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed. If a physician or weight loss clinic prescribed the diet drugs directly, or pharmacy records are unobtainable, a claimant must identify the prescribing physician, including the prescribing physician's name, address and telephone number, and submit a copy of the medical records prescribing or dispensing the drugs. If the pharmacy records and medical records are unobtainable, a claimant must submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

3. Dr. Ivy submitted a Blue Form dated June 5, 2002.
4. According to questions 7, 8 and 9 of Dr. Ivy's Blue Form, dated June 5, 2002, Dr. Ivy answered that he took Pondimin for 61 days or more.
5. The record establishes that Dr. Ivy failed to submit to the Trust any pharmacy records or copies of any medical records prescribing or dispensing diet drugs. This was conceded by Dr. Ivy's attorney during the Arbitration Hearing.
6. In lieu of the pharmacy records or medical records, Dr. Ivy submitted an affidavit under penalty of perjury stating that he self-prescribed and ingested Pondimin, once a day, intermittently between 1990 and 1995. The affidavit further states that the Pondimin he ingested was provided to him in the form of samples from drug company representatives. He further states that he has no other independent prescription records documenting his diet drug use.
7. Pursuant to the Settlement Agreement, in order to constitute acceptable documentation of diet drug ingestion, the affidavit under penalty of perjury must be from the prescribing physician or dispensing pharmacy must identify the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s). See id. § VI.C.2.d.(3).
8. The affidavit of Dr. Ivy is from the dispensing physician, being himself, identifies the claimant, Dr. Ivy, and the drug dispensed, Pondimin. The affidavit otherwise fails to contain the other information required by the Settlement Agreement. In particular, the affidavit fails to set forth any dosages of the diet drug allegedly dispensed. The affidavit also fails to set forth any of the dates on which the diet drugs were dispensed. The affidavit vaguely states that samples were taken "... intermittently between 1990 and 1995..." This

description of usage, however, does not provide quantity, frequency or the number of prescriptions or refills of the diet drug as required by the Settlement Agreement. See id. § VI.C.2.d.(3).

9. As a result, the Trust determined that Dr. Ivy failed to supply the required documentation needed to establish that he had ingested Pondimin. I conclude that the Trust's analysis and determination were not clearly erroneous.

CONCLUSIONS

1. The Claimant failed to provide documentary proof of diet drug ingestion to the Trust as required by the Settlement Agreement.

2. Based on the above, the findings of the Trust are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.

3. The final determination of the Trust is affirmed.

May 21, 2008


LUTHER E. WEAVER, III, ESQUIRE
ARBITRATOR